



0000071297

47

Arizona Corporation Commission
DOCKETED

RECEIVED
AZ CORP COMMISSION

NOV 29 1996

Nov 29 3 07 PM '96

DOCKETED BY *[Signature]*

DOCUMENT CONTROL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chairman

MARCIA WEEKS
Commissioner

CARL J. KUNASEK
Commissioner

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF COMPETITION
IN THE PROVISION OF ELECTRIC
SERVICES THROUGHOUT THE
STATE OF ARIZONA

DOCKET No. U-0000-94-165
COMMENTS OF THE IRRIGATION AND
ELECTRICAL DISTRICTS' ASSOCIATION
OF ARIZONA ON THE COMMISSION'S
PROPOSED RULES REGARDING THE
INTRODUCTION OF RETAIL ELECTRIC
COMPETITION TO ARIZONA

The Irrigation and Electrical Districts' Association of Arizona (IEDA) is a non-profit Arizona association whose membership includes fourteen irrigation, electrical and water conservation districts, a water users association and an Indian community, all of which provide electric service at retail to consumers in Arizona. Each of them has different mixes of loads, although all of the membership serves primarily irrigation loads, primarily in rural parts of central and southwestern Arizona. None of the members are public service corporations subject to the jurisdiction of the Arizona Corporation Commission (Commission). None of the members have an exclusive right to serve. Indeed, at the present time, all but one of the members serve retail electricity in their service areas simultaneously with retail electric service also being served by one or more other utilities in the same service area. Thus, all but one of the IEDA membership is currently engaged in retail competition and all the

1 IEDA membership is already subject to such competition by other
2 utilities.

3 We have participated in the informal proceedings leading up to
4 the formal proposed rulemaking through our attorney, undersigned, and
5 by attendance of representatives of members. We have the following
6 comments on the proposed rules:

7
8 1. The Proposed Rules Ignore Non-jurisdictional Utilities Such
9 As IEDA Members And Thus Only Interfere With The Little Bit of Retail
10 Competition Already Underway In Arizona.

11 We take pains to point out the overlapping service that
12 occurs and can occur in the service areas of our members because they
13 have been totally ignored in the crafting of these proposed rules.
14 There is not one reference in the entire rulemaking that could be
15 said to reflect on the way the rules are to apply where retail
16 competition already exists in Arizona. Most of our members are
17 restricted to some extent as to the loads they can serve by State
18 law. Some of them are additionally restricted, for the time being,
19 by contracts which limit the resources for which transmission
20 utilities in Arizona agree to wheel power and for types of loads for
21 which such wheeling is agreed by the transmitting utility to take
22 place. Obviously, these wheeling arrangements fly in the face of the
23 concept of retail competition, but they exist. Conversely, the
24 transmitting utilities in question are not currently and would not be
25 restricted from competing with IEDA members or other similar
26 entities. IEDA members and others have survived in this unlevel
27
28

1 playing field nevertheless. That they have done so is testimony to
2 the fact that they can deliver retail electric service in competition
3 with larger utilities and at rates that retail consumers they serve
4 find attractive. Theoretically, that is the point of these
5 regulations. It is difficult to understand, therefore, why this
6 entire class of electric utilities in Arizona has been ignored to
7 date in this rulemaking process. Since our customers already have
8 choice, their current advantage over other electric utility customers
9 in Arizona should be recognized and these rules should do nothing to
10 impair that advantage. Rather, these rules should attempt to move
11 others into similar advantage. To repair this oversight, the very
12 least the rules could do is to insert in a new section concerning
13 "Applicability", after the definitions, the following provision:
14

15 Nothing in these rules is intended impair or otherwise affect
16 the customer choice currently available to retail customers that
17 already may choose among electric utility service providers
18 under existing law and regulations.
19

20 **2. The Commission's Proposed Rules Should Be Modified To Avoid**
21 **Raising Constitutional Challenges.**

22 The proposed rules are replete with references that raise
23 constitutional issues all tied to the definition of "public service
24 corporation" in the Arizona Constitution. As the Commission well
25 knows, it has no jurisdiction beyond the four corners of that
26 definition. It would take a constitutional amendment to alter that
27 reality. Thus, references to the Salt River Project Agricultural
28

1 Improvement and Power District (SRP) in the definition of "affected
2 utilities", the failure to confine the definition of "electric
3 service provider" to a public service corporation, the failure to
4 likewise limit that latter definition in R14-2-1603.B., and the
5 convoluted attempt to dance around the problem while facially
6 enlarging the Commission's jurisdiction in R14-2-1611 (In-State
7 Reciprocity), all endanger the viability of these rules. The
8 Commission must choose whether the next level of debate on
9 jurisdiction occurs in the judicial branch or the legislative branch.
10 If it is the former, then certainly the goals of this proposed
11 rulemaking will be thwarted by what could be substantial extensions
12 of the Commission's intended timetable. Others have addressed the
13 legal arguments involved and we will not duplicate that effort.
14 Suffice it to say that this is a potential controversy not within the
15 powers of the Commission to resolve and it should not attempt to do
16 so.
17

18
19 3. There Are A Number Of Other Problems Concerning The Rules,
20 Both As To Wording And Substance, That Arise From Matters Included In
21 The Rules.

22 a) The definition of "stranded cost" uses the term
23 "verifiable" without further reference in the proposed rules. This
24 term of art can be either a process standard or a substantive
25 standard or both. It is not explained and yet this will be a major
26 bone of contention. The intent of the Commission should be
27 clarified.
28

1 b) The "system benefits" definition, matched with the
2 proposed rule on that subject (R14-2-1608) and the solar portfolios
3 standard (R14-2-1609), apparently would allow recovery of solar
4 energy costs only against consumers participating in the competitive
5 market and not those that stay home. Thus, affected utilities are
6 forced to acquire uneconomic resources and then are limited as to the
7 ability to spread those costs. Electric service providers are not
8 specifically so limited, raising the issue of potential
9 discriminatory application of requirements.
10

11 c) The new certificate of convenience and necessity rule
12 (R14-2-1603) restricts new entrants (electric service providers) to
13 the geographical areas served by affected utilities. Thus, these new
14 entrants, to the extent they are public service corporations, could
15 be validly restricted by the Commission to providing competitive
16 service only against other public service corporations. This
17 artificial geographic limitation flies in the face of the concept of
18 retail competition. For most of the State, the Commission is turning
19 the electric CC&N into a professional license. For the areas left
20 out, it is somewhat akin to saying that you can practice medicine in
21 Arizona once licensed but only in certain counties.
22

23 Moreover, this is a perfect example of how the rules
24 do not fit the circumstances of IEDA members. Under this rule, an
25 electric service provider would be required to notify an affected
26 utility about its entry into the market but not the IEDA member or
27 other similar entity providing electric service in the same area.
28

1 Does the Commission also intend that the electric service provider
2 could not compete against the non-jurisdictional entity serving in
3 that same area?

4 d) The rules are totally deficient in describing the
5 process with regard to the setting and changing of rates. References
6 in R14-2-1606.G., R14-2-1608.A., R14-2-1612, and elsewhere suggest
7 that the Commission has some idea of a rate process that it will
8 conduct in the future even after market-based ratemaking is fully
9 established. Yet, there is no reference to notice requirements
10 otherwise found in Commission rules nor is there any reference to the
11 Rules of Practice and Procedure and how they apply. It is also
12 unclear whether the Rules of Practice and Procedure can be used to
13 complain about non-compliance with these rules by an affected utility
14 or electric service provider. Will all of these procedures be
15 handled by special orders?
16

17 e) The proposed rule on spot markets and independent
18 system operation (R14-2-1610), portions of the proposed rule on in-
19 state reciprocity (R14-2-1611.C.) and the proposed rule on dispute
20 resolution (R14-2-1615.D.) do not appear to be proper subjects for
21 regulation. To the extent that these proposals appear to order the
22 Commission to begin a course of action, they smack of legislative
23 mandates more appropriate to the Legislature than the Commission. To
24 the extent that these provisions merely indicate that the Commission
25 might do something in the future, they do not regulate the activity
26
27
28

1 or conduct of any entity subject to regulation by the Commission and
2 have no business in regulations.

3 f) The general provisions about applicability found in
4 R14-2-1613.A. and B. do not belong there. Rather, they should be
5 combined with other provisions in a general statement of
6 applicability of other portions of the Commission's rules and
7 regulations, including the provision we have suggested and
8 applicability of existing rules on notice, hearings and other
9 practice and procedure rules.
10

11 g) The provision on variations or exemptions conflicts
12 with the existing rule (R14-2-212.I.), yet these rules appear to
13 incorporate that existing rule.

14 **4. There Are Several Issues Raised By Omission In These Rules.**

15 a) As discussed in the informal and formal processes
16 leading up to publication of these proposed rules, the basic issue of
17 who provides the safety net for those who have left a provider and
18 return have not been addressed.
19

20 b) Jurisdiction over foreign corporations has not been
21 addressed. The Arizona Constitution acknowledges State authority as
22 to foreign private corporations doing business in Arizona but these
23 rules do not attempt to directly implement that mandate as to such
24 private corporations entering Arizona that would become public
25 service corporations in Arizona by their conduct.

26 c) The rules do not address the issue of competition from
27 outside Arizona where there is insufficient presence for the
28

1 competitor to be treated as an electric service provider or the even
2 more difficult subject of a municipal corporation from outside
3 Arizona providing service in Arizona. The latter issue is more
4 difficult because our Constitution is silent on the subject of
5 foreign municipal corporation regulation.

6
7 **5. The Proposed Rule On In-State Reciprocity (R14-2-1611)**
8 **Needs To Be Amended.**

9 A. This subparagraph would make sense if it were clear
10 that the use of the term "Arizona electric utilities" here and
11 elsewhere in the rules was confined to public service corporations.
12 That clarification would be consistent with the definitions
13 incorporated by reference. Subsection B would then complement
14 subsection A.

15 C. As previously discussed, this subsection appears to be
16 legislating activity of a future Commission through rulemaking. It
17 suggests separation of powers problems and clearly is not regulating
18 conduct of regulated entities.

19 D. This provision attempts to draw Arizona political
20 subdivisions that are in the retail electric utility business into
21 this rulemaking in a voluntary fashion. Unfortunately, it uses
22 improper terminology, "Arizona electric utility", contains a caveat
23 requiring "enforcement mechanisms" to be established (which can't be)
24 and allows public service corporations that are affected utilities
25 subject to this rule to veto such voluntary participation, an
26 improper attempt to delegate to public service corporations
27
28

1 jurisdictional authority the Commission does not have. Moreover,
2 such delegation, if coupled with a properly written voluntary
3 reciprocity rule, would constitute an improper delegation of
4 authority from the Commission to regulated entities.

5 If we start from the assumption that non-regulated
6 entities providing electric service in Arizona at retail should be
7 encouraged to voluntarily participate in retail electric competition,
8 the ostensible purpose of this provision, then public policy would be
9 served by writing this provision correctly within the current limits
10 of the Commission's jurisdiction. That would not only avoid the
11 jurisdictional fight embodied in the proposal but would actually
12 encourage something beneficial: broader retail competition. Toward
13 that end we have the following suggestion to substitute for the
14 proposed subsection D:
15

16 An Arizona entity providing retail electric service to
17 consumers, not subject to the jurisdiction of the Commission,
18 may voluntarily file with the Commission its standard offer
19 tariff, electric supply tariffs, unbundled services rates,
20 stranded cost charges, system benefits charges, distribution
21 service charges and any other applicable tariffs, for services
22 these entities offer, for which these rules otherwise require
23 filing by affected utilities or electric service providers. For
24 any such entity having an exclusive service territory at the
25 effective date of these rules, the entity may submit its
26 statement that it voluntarily opens its service territory for
27
28

1 competing sellers. Such filings shall serve as authorization
2 for such entities to utilize the Commission's Rule of Practice
3 of Procedure and other applicable rules concerning any complaint
4 that an affected utility or electric service provider is
5 violating any provisions of this article or otherwise
6 discriminating against the filing entity or failing to provide
7 just and reasonable rates in tariffs filed under this article.
8

9 What we are suggesting essentially defines a new role
10 for the Commission, one that the Federal Energy Regulatory Commission
11 (FERC) already plays. FERC, dealing with transmission, has used a
12 slightly different version of this "carrot and stick" approach but
13 with the same recognition of the limits on its jurisdiction and the
14 value that its role in ensuring compliance with its rules has to the
15 industry generally, including utilities over which it has no direct
16 jurisdiction.
17

18 We realize that SRP has suggested a negotiated
19 approach using intergovernmental agreements to address issues that
20 have been raised in this proceeding about non-jurisdictional
21 entities. Our approach would not preclude using that tool. However,
22 the elements and provisions of intergovernmental agreements on this
23 subject should have some common yardstick and not be negotiated on an
24 ad hoc basis. Getting there will require some considerable effort.
25 In the meantime, this provision could be put in place at once,
26 pending the outcome of the various working group determinations and
27 further negotiation on the subject of intergovernmental agreements.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted this 29th day of November, 1996.

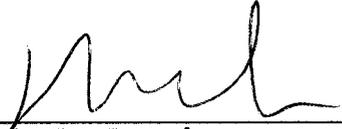


Robert S. Lynch
State Bar No. 001638
Attorney for the Irrigation and
Electrical Districts Association
of Arizona

1 CERTIFICATE OF SERVICE

2 The original and ten (10) copies of the foregoing Comments
3 of the Irrigation and Electrical Districts' Association of Arizona on
4 the Commission's Proposed Rules Regarding the Introduction of Retail
5 Electric Competition to Arizona were filed this 29th day of November,
6 1996, with:

7
8 Docket Control
9 Arizona Corporation Commission
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 
Robert S. Lynch

13
14 Copies of the foregoing mailed
15 this 29th day of November, 1996, to:

16 C. Webb Crockett
17 **Fennemore Craig, PC**
18 Two North Central Avenue
Suite 2200
Phoenix, AZ 85004-2390

19 Beth Ann Burns
20 Associate General Counsel
21 **Citizens Utilities Company**
22 2901 North Central Avenue
Suite 1660
Phoenix, AZ 85012

23 Charles R. Huggins
24 **Arizona State AFL-CIO**
25 110 North 5th Avenue
P.O. Box 13488
Phoenix, AZ 85002

26 Vicki G. Sandler
27 **Arizona Public Service Company**
28 Law Department Sta. 9829
P.O. Box 53999
Phoenix, AZ 85072-3999

1 David C. Kennedy
2 **Law Offices of David C. Kennedy**
3 100 W. Clarendon, Suite 200
4 Phoenix, AZ 85012-3523

5 Steven M. Wheeler
6 Thomas L. Mumaw
7 **Snell & Wilmer**
8 One Arizona Center
9 400 E. Van Buren
10 Phoenix, AZ 85004-0001

11 Richard L. Sallquist
12 **Sallquist & Drummond, PC**
13 2525 E. Arizona Biltmore Circle
14 Suite 117
15 Phoenix, AZ 85016-2129

16 Norman J. Furuta
17 Associate Counsel
18 **Department of the Navy**
19 900 Commodore Dr., Bldg. 107
20 P.O. Box 727 (Attn: Code 90C)
21 San Bruno, CA 94066-0720

22 Michael A. Curtis
23 William P. Sullivan
24 **Martinez & Curtis, PC**
25 2712 North 7th Street
26 Phoenix, AZ 85006

27 Paul J. Roshka, Jr.
28 Raymond S. Heyman
29 **Roshka Heyman & DeWulf**
30 Two Arizona Center
31 400 North 5th Street, Suite 1000
32 Phoenix, AZ 85004

33 Thomas C. Horne
34 Michael S. Dulberg
35 **Horne Kaplan & Bistrow, PC**
36 40 North Central Avenue
37 Suite 2800
38 Phoenix, AZ 85004

39 Barbara S. Bush
40 Executive Director
41 **Coalition for Responsible Energy Education**
42 315 West Riviera Drive
43 Tempe, AZ 85252

1 Larry R. Braber, Vice President
Utility Services
2 **Cyprus Metals Company**
9100 East Mineral Circle
3 Englewood, CO 80112
4 Sam DeFrawl
5 Rate Intervention Div. Attn: Code 16R
Naval Facility Engrg Command
6 Room 10S12
200 Stoval Street
7 Alexandria, VA 22332-2300
8 Rick Lavis
9 **Arizona Cotton Growers Association**
4139 East Broadway Road
10 Phoenix, AZ 85040
11 Myron Scott
Lewis & Clark College
12 **Natural Resources Law Institute**
10015 SW Terwillinger Blvd.
13 Portland, OR 97219
14 Bruce Driver
15 Eric Blank
Land & Water Fund of Rockies
16 Law Fund Energy Project
2260 Baseline, Suite 200
17 Boulder, CO 80302
18 Steven Glaser
19 David Lamoreaux
Tucson Electric Power Company
20 220 West 6th Street
Tucson, AZ 85701
21 Greg Patterson, Director
22 **Residential Utility Consumer Office**
1501 West Washington, Suite 227
23 Phoenix, AZ 85007
24 Thomas R. Sheets
25 Andrew W. Bettwy
Office of Regulatory Affairs
26 **Southwest Gas Corporation**
5241 West Spring Mountain Road
27 Las Vegas, NV 89102
28

1 Michael M. Grant
2 **Johnston Maynard Grant & Parker**
3 3200 North Central Avenue, Suite 2300
4 Phoenix, AZ 85012

5 Bruce E. Meyerson
6 **Meyer Hendricks**
7 2929 North Central Avenue
8 Phoenix, AZ 85012

9 Jack Haenichen
10 Director, Arizona Energy Office
11 **Arizona Department of Commerce**
12 3800 North Central Avenue
13 Phoenix, AZ 85012

14 Lex J. Smith
15 **Brown & Bain, PA**
16 2901 North Central Avenue
17 P.O. Box 400
18 Phoenix, AZ 85001-0400

19 Steve Brittle, President
20 **Don't Waste Arizona, Inc.**
21 6205 South 12th Street
22 Phoenix, AZ 85040

23 **Arizona Electric Power Cooperative, Inc.**
24 P.O. Box 670
25 Benson, AZ 85602

26 **Ajo Improvement Company**
27 P.O. Drawer 9
28 Ajo, AZ 85321

29 **Continental Divide Electric Cooperative**
30 P.O. Box 1087
31 Grants, NM 87020

32 **Columbus Electric Cooperative, Inc.**
33 P.O. Box 631
34 Deming, NM 88031

35 **Trico Electric Cooperative, Inc.**
36 P.O. Box 35970
37 Tucson, AZ 85740

38 **Dixie Escalante Rural Electric Assoc.**
39 CR Box 95
40 Beryl, UT 84714

- 1 **Duncan Valley Electric Cooperative, Inc.**
P.O. Box 440
- 2 Duncan, AZ 85534
- 3 **Garkane Power Association, Inc.**
P.O. Box 790
- 4 Richfield, UT 84701
- 5 **Graham County Electric Cooperative, Inc.**
P.O. Box Drawer B
- 6 Pima, AZ 85543
- 7
- 8 **Mohave Electric Cooperative, Inc.**
P.O. Box 1045
- 9 Bullhead City, AZ 86430
- 10 **Morenci Water and Electric Company**
P.O. Box 68
- 11 Morenci, AZ 85540
- 12 **Navopache Electric Cooperative, Inc.**
P.O. Box 308
- 13 Lakeside, AZ 85929
- 14 **Sulphur Springs Valley Electric Coop.**
P.O. Box 820
- 15 Wilcox, AZ 85644
- 16
- 17 **Ms. Karen Glennon**
19037 North 44th Avenue
- 18 Glendale, AZ 85308
- 19 Walter W. Meek, President
Arizona Utility Investors Association
- 20 3030 North Central Avenue, Suite 506
Phoenix, AZ 85012
- 21
- 22 Louis A. Stahl
Lisa D. Duran
- 23 **Streich Lang**
Renaissance One
- 24 Two North Central Avenue
Phoenix, AZ 85004-2391
- 25
- 26 Terry Ross, Vice President
Center for Energy and Economic Development
- 27 7853 East Arapahoe Court, Suite 2600
Englewood, CO 80112
- 28

1 Peter Glaser
2 **Doherty, Rumble & Butler, P.A.**
3 1401 New York Avenue, N.W.
4 Suite 1100
5 Washington, D.C. 20005

6 Richard S. Shapiro, Senior Director
7 **Enron Capital & Trade Resources**
8 1400 Smith Street, Suite 1405
9 Houston, TX 77002

10 Albert Sterman, Vice President
11 **Arizona Consumer Council**
12 2849 E. 8th Street
13 Tucson, AZ 85716

14 **Calpine Power Services Company**
15 50 West San Fernando
16 San Jose, CA 95113

17 **K.R. Saline & Associates**
18 P.O. Box 30279
19 Mesa, AZ 85275-0279

20 Dan Neidlinger
21 **Neidlinger & Associates, Ltd.**
22 3020 N. 17th Drive
23 Phoenix, AZ 85015

24 Russell E. Jones
25 **O'Connor Cavanagh Molloy Jones**
26 One E. Camelback Road, Suite 1100
27 Phoenix, AZ 85012-1656
28 Attorneys for Trico Electric Cooperative

John Jay List, General Counsel
**National Rural Utilities Cooperative
Finance Corporation**
2201 Cooperative Way
Herndon, VA 21071

Sue Arnold, Financial Analyst
Program Support and Regulatory Analysis
Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Mail Stop 1522
Washington, D.C. 20250-1522

1 Wallace F. Tillman, Chief Counsel
Susan N. Kelly, Regulatory Counsel
2 **National Rural Electric Cooperative Association**
4301 Wilson Boulevard
3 Arlington, VA 22203-1860

4 David X. Kolk, Ph.D.
5 **Power Resource Managers, L.L.C.**
2940 Inland Empire Blvd., Suite 123
6 Ontario, CA 91764

7 Debra S. Jacobson, Manager
State Regulatory Affairs
8 **Southwest Gas Corporation**
9 P.O. Box 98510
5241 Spring Mountain Road
10 Las Vegas, NV 89193-8510

11 Ellen Corkhill
12 **American Association of Retired Persons**
5606 N. 17th Street
13 Phoenix, AZ 85016

14 William D. Baker, Assistant Secretary
15 **Electrical District No. 6**
Pinal County, Arizona
P.O. Box 16450
16 Phoenix, AZ 85011-6450

17 Sheryl A. Taylor
18 **Ryley, Carlock & Applewhite**
101 North First Avenue, Suite 2700
19 Phoenix, AZ 85003-1973

20 **Douglas C. Nelson, P.C.**
7000 North 16th Street
21 #120-307
Phoenix, AZ 85020
22

23 Nancy Russell
24 **Public Interest Coalition on Energy**
2025 N. 3rd Street, Suite 175
Phoenix, AZ 85004
25

26 Jessica Youle
Jana D. Alfano
27 **Salt River Project Agricultural**
Improvement and Power District
28 P.O. Box 52025, PAB 300
Phoenix, AZ 85072-2025

1 John Christian
Glenn Carter
2 **Jennings, Strouss & Salmon**
One Renaissance Square
3 Two North Central avenue
4 Phoenix, AZ 85004-2393
5 Barry N.P. Huddleston
Regional Manager, Regulatory Affairs
6 **Destec Energy, Inc.**
2500 City West Blvd., Suite 150
7 Houston, TX 77042

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28